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SUPREME COURT, U. S.

No. 1002

IN THE

Supreme Court of the United States

OCTOBER TERM 1957

STATE OF FLORIDA, *ex rel.* WALTER G. ARNOLD,

Petitioner,

v.

P. B. REVELS, as Judge of The Circuit Court In and For Volusia County, Florida,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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The petitioner prays that this Court grant a rehearing of its order of June 23, 1958, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Supreme Court of Florida entered in the above entitled cause as prayed for in the petition filed May 14, 1958.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

The petitioner respectfully represents that the judgment of the Supreme Court of Florida in this cause denying to petitioner immunity from criminal prosecution on the bribery charge is in fact a denial to the petitioner of the equal protection of the laws of the State of Florida.

INDEX.

	Page
REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT	1
CONCLUSION	8

CITATIONS.

CASES:

Atlantic Coast Line R. Co. v. Phillips, 332 U. S. 168, 91 L. Ed. 1977, 67 S. Ct. 1584	6
Barbier v. Connolly, 113 U. S. 27, 5 S. Ct. 357, 28 L. Ed. 923	6
Boyd v. United States, 116 U. S. 616, 6 S. Ct. 524, 29 L. Ed. 746	2
Boynton v. State (Fla.), 75 So. 2d 271	5
Bridge Proprs. v. Hoboken Land & Improve. Co., 1 Wall 116, 17 L. Ed. 571	6
Brown v. State of Mississippi, 297 U. S. 278, 56 S. Ct. 461, 80 L. Ed. 682	3
Brown v. Walker, 161 U. S. 591, 16 S. Ct. 644, 40 L. Ed. 819	3
Chambers v. State of Florida, 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716	3, 8
Griffin v. People of the State of Illinois, 351 U. S. 12, 76 S. Ct. 585, 100 L. Ed. 891	7
Ingram v. Prescott (1933), 111 Fla. 320, 149 So. 369	3, 6
Jefferson Branch Bank v. Skelly, 1 Black 436, 17 L. Ed. 173	6

Page

McGahey v. *State of Virginia*, 135 U. S. 662, 34 L. Ed. 304, 10 S. Ct. 972 6

McKown v. *State* (Fla. 1951), 54 So. 2d 54 ..... 3, 6

Millsaps College v. *City of Jackson*, 275 U. S. 129, 72 L. Ed. 196, 48 S. Ct. 94 6

New York ex rel Clyde v. *Gilchrist*, 262 U. S. 94, 67 L. Ed. 883, 43 S. Ct. 501 6

Quinn v. *United States*, 349 U. S. 155, 75 S. Ct. 668, 99 L. Ed. 964 3

Shelley v. *Kraemer*, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 4

Slochower v. *Board of Higher Ed. of City of N. Y.*, 350 U. S. 551, 76 S. Ct. 637, 100 L. Ed. 692 3

State ex rel Mitchell v. *Kelly* (Fla.), 71 So. 2d 887 .. 4

State v. *Hancock*, 146 Fla. 693, 1 So. 2d 609 4

Tidal Oil Co. v. *Flanagan*, 263 U. S. 444, 44 S. Ct. 197, 68 L. Ed. 382 5

Truax v. *Corrigan*, 257 U. S. 312, 42 S. Ct. 125, 66 L. Ed. 254 7

Twining v. *New Jersey*, 211 U. S. 76, 29 S. Ct. 14, 53 L. Ed. 97 4

United States v. *Monia*, 317 U. S. 424, 63 S. Ct. 409, 87 L. Ed. 376 5

Wilson v. *State*, 134 Fla. 390, 184 So. 31 4

Wright v. *Nagle*, 101 U. S. 791, 25 L. Ed. 921 5

Yick Wo v. *Hopkins*, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 8

Page

STATUTES:

Section 454.25, Florida Statutes 1955 2

Section 932.29, Florida Statutes 1955 ..... 2, 3, 4, 6, 8

CONSTITUTIONAL PROVISIONS:

Article I, Section X of Constitution of the United States 5

Fourteenth Amendment, Constitution of the United States 4, 5, 7

The State of Florida first filed a criminal information against petitioner charging him with bribery. Immediately thereafter and before the trial of the criminal case, the State of Florida filed a disbarment proceeding against petitioner, a lawyer, based on the identical charge of bribery set forth in the criminal information. The State of Florida in filing the motion for disbarment was well aware that petitioner would be compelled under Section 454.25, Florida Statutes 1955 to "file his answer thereto under oath or be held to have confessed the same." Failure to file the answer under oath would have meant disbarment and the forfeiture of the right to practice law. This was compulsion under *Boyd* v. *United States*, 116 U. S. 616, 6 S. Ct. 524, 29 L. Ed. 746. To further induce the petitioner to answer under oath the bribery charge contained in the disbarment proceeding the State of Florida confronted the petitioner with its immunity statute, Section 932.29, Florida Statutes 1955, wherein the State pledged that if petitioner produced evidence as to the bribery charge of an incriminating nature which would tend to convict him of the charge of bribery he would not be "prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence * * *."

The petitioner submitted to this compulsion and filed his sworn answer wherein he divulged certain information of an incriminating nature which tended to convict him of the crime of bribery charged in the criminal information. Instead of keeping its end of the bargain under the provisions of its immunity statute, the State of Florida, after receiving the benefit of the information, has taken the position and through its Supreme Court has held that "the disbarment proceeding based on a bribery charge is (not) an 'investigation, proceeding or trial for a violation of any of the statutes of this state against bribery' within the meaning of F. S. Sec. 932.29 F. S. A." Thus,

the State of Florida after compelling the petitioner to forego his constitutional immunity against incrimination, and receiving the benefit of his information, has repudiated its agreement with the petitioner and denied to petitioner the benefit of its immunity statute, Section 932.29, Florida Statutes.

In *Slochower* v. *Board of Higher Ed. of City of N. Y.*, 350 U.S. 551, 76 S. Ct. 637, 100 L. Ed. 692, this Court held:

> "The right of an accused person to refuse to testify, which had been in England merely a rule of evidence, was so important to our forefathers that they raised it to the dignity of a constitutional enactment and it has been recognized as 'one of the most valuable prerogatives of the citizen' *Brown* v. *Walker*, 161 U.S. 591, 610, 16 S. Ct. 644, 652, 40 L. Ed. 819. We have reaffirmed our faith in this principle recently in *Quinn* v. *United States*, 349 U. S. 155, 75 S. Ct. 668, 99 L. Ed. 964."

This Court has repeatedly set aside convictions based on confessions obtained by violence. *Brown* v. *State of Mississippi*, 297 U. S. 278, 56 S. Ct. 461, 80 L. Ed. 682, *Chambers* v. *State of Florida*, 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716. In these cases the convictions have been overturned because they were not consistent with the constitutional requirements of due process of law. Is a confession or admission which is obtained by artifice in any different category?

The State of Florida has long held that its immunity statute (Section 932.29) sets up a contract between the State and the criminal based on public policy and amounting to an exchange of an exemption for a disclosure of a crime. *McKown* v. *State* (Fla. 1951), 54 So. 2d 54, *Ingram* v. *Prescott* (1933), 111 Fla. 320, 149 So. 369. The petitioner has performed his part of the contract by revealing information pertaining to the alleged crime in the disbarment proceeding.

Now, the State under the guise of statutory construction has refused to carry out its end of the bargain and afford petitioner the immunity from criminal prosecution offered and guaranteed by the statute. The fact that the denial of immunity has come in the form of an opinion by the Supreme Court of Florida does not make it any less oppressive.

In *Twining* v. *New Jersey*, 211 U. S. 78, 90, 91, 29 S. Ct. 14, 16, 53 L. Ed. 97, the Court said:

> "The judicial act of the highest Court of the State, in authoritatively construing and enforcing its laws, is the act of the State."

In *Shelley* v. *Kraemer*, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161, it was held:

> "That the action of state courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court."

The decision of the Supreme Court of Florida in this case, denying petitioner immunity, does not state any reason for denying petitioner the protection of the immunity statute; the Court's opinion merely says, "We think it clear that the disbarment proceeding is not within the statutory scheme." Yet the immunity statute in clear terms, (Section 932.29), extends to "any investigation, proceeding or trial for a violation of any of the statutes of this state against bribery • • •". Certainly, a disbarment proceeding is as much an investigation or proceeding as a proceeding before a county solicitor (*Wilson* v. *State*, 134 Fla. 390, 184 So. 31) or an investigation by a State Attorney (*State* v. *Hancock*, 146 Fla. 693, 1 So. 2d 609) or a grand jury proceeding (*State ex rel. Mitchell* v.

Kelly (Fla.) 71 So. 2d 887) or a chancery proceeding to abate a nuisance (*Boynton* v. *State* (Fla.) 75 So. 2d 211), all of which have been held by the Supreme Court of Florida to be within the purview of the statute.

If the State of Florida can apply its immunity statute in some cases and arbitrarily withhold its protection in others, then it has indeed become a trap for the unwary, such as was condemned by this Court in *United States* v. *Monia*, 317 U. S. 424 63 S. Ct. 409, 87 L. Ed. 376.

It is against such arbitrary withholding of the equal protection of the law by a state that the Fourteenth Amendment is directed. Nor, should the state be permitted to frustrate the amendment under the guise of statutory construction. This Court in cases arising under the impairment of contract clause of Article 1, Section X of the Constitution has held:

> "It often happens that a law of the state constitutes part of the contract, and to make the constitutional inhibition effective, this Court must exercise an independent judgment in deciding as to the validity and construction of the law and the existence and terms of the contract."
>
> *Tidal Oil Co.* v. *Flanagan*, 263 U. S. 444, 44 S. Ct. 197, 68 L. Ed. 382.

In *Wright* v. *Nagle*, 101 U. S. 791, 25 L. Ed. 921, this Court, in speaking of the binding effect of the construction of a statute placed on it by the state court, said:

> "It is also true that ordinarily such a construction would be conclusive on us. One exception, however, exists to this rule, and that is when the state court 'has been called upon to interpret the contracts of States,

> "though they have been made in the forms of law", or by the instrumentality of a State's authorized functionaries in conformity with State Legislation' ".

To the same effect, see *McGahey* v. *State of Virginia*, 135 U. S. 662, 34 L. Ed. 304, 10 S. Ct. 972; *Jefferson Branch Bank* v. *Skelly*, 1 Black 436, 443, 17 L. Ed. 173; *Bridge Proprs.* v. *Hoboken Land & Improv. Co.*, 1 Wall. 116, 17 L. Ed. 571; *New York ex rel Clyde* v. *Gilchrist*, 262 U. S. 94, 67 L. Ed. 883, 43 S. Ct. 501; *Millsaps College* v. *City of Jackson*, 275 U. S. 129, 72 L. Ed. 196, 48 S. Ct. 94.

In *Atlantic Coast Line R. Co.* v. *Phillips*, 332 U. S. 168, 91 L. Ed. 1977, 67 S. Ct. 1584, it was held:

> "A claim that a State Statute impairs the obligation of contract is an appeal to the United States Constitution, and cannot be foreclosed by a State Court's determination whether there was a contract or what were its obligations."

The State of Florida is committed to the principle that its immunity statute, Section 932.29, enters into and forms a part of the contract between the State and the person from whom the information is elicited. *McKown* v. *State* (Fla.) 50 So. 2d 54; *Ingram* v. *Prescott*, 111 Fla. 320, 149 So. 369. Since this statute becomes a part of such a contract this Court has the authority, under the cases above cited, to determine whether the State of Florida, in this instance, entered into a contract with petitioner for immunity. If there was in fact such a contract, this Court may and should determine whether or not the constitutional rights of this petitioner under that contract have been violated by the State's denying to petitioner the immunity contracted for.

In *Barbier* v. *Connolly*, 113 U. S. 27, 5 S. Ct. 357, 28 L. Ed.

923, this Court said, in speaking of the Fourteenth Amendment, that it intended:

> "* * * not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances;"

The petitioner having entered into a valid contract with the State of Florida under its immunity statute, the State cannot arbitrarily withhold from petitioner the provisions of this statute merely because petitioner is a lawyer. In *Truax v. Corrigan*, 257 U. S. 312, 42 S. Ct. 125, 66 L. Ed. 254, this Court struck down an exception in an Arizona statute which denied to an employer the right of relief by injunction against ex-employees in labor disputes. The Court held that this exception amounted to a denial of the equal protection of the laws.

In *Griffin v. People of the State of Illinois*, 351 U. S. 12, 76 S. Ct. 585, 100 L. Ed. 891, it was held:

> "In this tradition, our own constitutional guaranties of due process and equal protection both call for procedures in criminal trials which allow no invidious discriminations between persons and different groups of

> persons. Both equal protection and due process emphasize the central aim of our entire judicial system -- all people charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of justice in every American Court' *Chambers* v. *Florida*, 309 U. S. 227, 241, 60 S. Ct. 472, 479, 84 L. Ed. 716. See also *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369, 6 S. Ct. 1064, 1070, 30 L. Ed. 220."

It is submitted that since Section 932.29, Florida Statutes, is an integral part of the contract between the petitioner and the State of Florida, the finding of the Supreme Court of Florida to the effect that there was no contract is not binding on this Court. It is requested that this Court analyze the facts in this case and determine that there was in truth a contract between petitioner and the State of Florida under its immunity statute and that the State of Florida, by judicially ingrafting an exception into the provisions of Section 932.29, Florida Statutes, has denied to petitioner the equal protection of the law and impaired petitioner's rights under his contract with the State.

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Supreme Court of Florida.

Respectfully submitted,

CHESTER BEDELL
Counsel for Petitioner.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58(2) of the Rules of this Court.

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